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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,047	12/31/2003	Randy Dale Curry	42173-017	2279
29493	7590 03/28/2006		EXAMINER	
HUSCH & EPPENBERGER, LLC		.C	CONLEY, SEAN EVERETT	
190 CARON SUITE 600	IDELET PLAZA		ART UNIT	PAPER NUMBER
ST. LOUIS,	MO 63105-3441		1744	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)				
Office Astinus Occurrence	10/750,047	CURRY ET AL.				
Office Action Summary	Examiner	Art Unit				
	Sean E. Conley	1744				
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet with	the correspondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING D.  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period or - Failure to reply within the set or extended period for reply will, by statute Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICA 36(a). In no event, however, may a rep will apply and will expire SIX (6) MONTH e, cause the application to become ABAR	ATION.  y be timely filed  S from the mailing date of this communication.  IDONED (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on 19 Ja	anuary 2006.					
2a)⊠ This action is <b>FINAL</b> . 2b)☐ This	This action is <b>FINAL</b> . 2b) This action is non-final.					
3) Since this application is in condition for allowa	nce except for formal matter	s, prosecution as to the merits is				
closed in accordance with the practice under E	Ex parte Quayle, 1935 C.D.	1, 453 O.G. 213.				
Disposition of Claims						
4) ☐ Claim(s) 50-60 is/are pending in the applicatio 4a) Of the above claim(s) is/are withdraw 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 50-60 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/o	wn from consideration.					
Application Papers	·					
9) ☐ The specification is objected to by the Examine 10) ☑ The drawing(s) filed on 12/31/2003 is/are: a) ☑ Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) ☐ The oath or declaration is objected to by the Example 11.	☑ accepted or b) ☐ objected drawing(s) be held in abeyance tion is required if the drawing(s)	s. See 37 CFR 1.85(a). is objected to. See 37 CFR 1.121(d).				
Priority under 35 U.S.C. § 119						
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:  1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority application from the International Bureau * See the attached detailed Office action for a list	s have been received. s have been received in Apprity documents have been re u (PCT Rule 17.2(a)).	lication No ceived in this National Stage				
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	Paper No(s)/I	nmary (PTO-413) Mail Date mal Patent Application (PTO-152)				

#### **DETAILED ACTION**

## Response to Amendment

The amendment filed January 19, 2006 has been received and considered for examination. Claims 50-60 are pending. The Terminal Disclaimer filed January 19, 2006 has been disapproved for the reason set forth below and therefore has not been entered.

#### Terminal Disclaimer

2. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c). Specifically, Grant Kang (who signed the Terminal Disclaimer) is not listed as an attorney of record in this application.

#### **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 50-51, 54-55, and 57-58 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 59-60 and 62-68 of copending Application No. 10/750,048 in view of Peltier (U.S. Patent No. 5,382,410).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the claimed subject matter of copending Application No. 10/750,048 with Peltier to teach the method steps for the method of decontaminating a contaminated surface, the method comprising spraying a conducting backing for the surface, e.g. the electrically charging of the photosensitizer, as taught by Peltier, allowing the electrically charged photosensitizer to attract to the surface for decontamination.

This is a <u>provisional</u> obviousness-type double patenting rejection.

# Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 50-53 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over the non-patent literature, Bayliss et al., "The Combined Effect of Hydrogen Peroxide and Ultraviolet Irradiation op Bacterial Spores", Journal of Applied Bacteriology 47:263-269 (1979) in view of Blidschun et al. (U.S. Patent No. 4,680,163) and Peltier (U.S. Patent No. 5,382,410).

Regarding claim 50, Bayliss et al. teach a method of decontaminating a contaminated surface, the method comprising: applying a photosensitizer [a commonly known photosensitizer] onto the contaminated surface and illuminating the sprayed surface with light to cause chemical reactions to decontaminate the surface (see page 263 - ultraviolet (light) irradiation of spores of *Bacillus subtilis* in the presence of hydrogen peroxide produces a rapid kill which is up to 2000-fold greater than that produced by irradiation alone). Bayliss et al. fail to teach that the photosensitizer is electrically charged and fail to teach that the method of decontaminating a contaminated surface comprises spraying the photosensitizer onto the contaminated surface of a person-occupiable space, in an environment open to the person-occupiable space.

Blidschun et al. teach the use of a sterilizing agent, hydrogen peroxide, which is ultrasonically atomized to form a mist, e.g. <u>for spraying</u>, charged and subsequently directed to, e.g. <u>spraying</u>, the [contaminated] surface to be sterilized by an electrostatic field. The electrostatic field causes the exceedingly small charged droplets, which form the mist of the sterilizing agent to be conveyed to the surface (see col. 2, line 58 to col. 3, line 13). Peltier teaches the controlled generation of electrically charged vapors and/or aerosols from liquids, which are then released directly into the air of a room, or

onto the inner surfaces of ventilation system duct work of a building or onto the surfaces of a ventilation system mechanical equipment and/or to distribute the vapor/aerosols throughout a building through the ventilation system, e.g. onto contaminated surfaces of a person occupiable space - chairs, floors, rooms, etc., in an environment open to the person-occupiable space - within a building (see col. 2, lines 47-53). Peltier further teaches that the method adds disinfection agents, fungicides, bactericides, viruscides, and related formulates (see col. 2, line 65 to col. 3, line 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Blidschun et al. and Peltier with Bayliss et al. because Bayliss et al. teach the effectiveness of illuminating a photosensitizer, such as hydrogen peroxide, with ultraviolet light for killing bacteria spores on contaminated surfaces. Incorporating the method of spraying an electrically charged photosensitizer from Blidschun et al. and Bayliss et al. onto a surface of a person-occupiable space, in an environment open to the person occupiable-space, e.g. into a room, enclosed space of any kind, or a building through the building air conditioning system, as taught by the method of Peltier, would allow for the adherence of the photosensitizer onto contaminated surfaces of person-occupiable spaces, e.g. chairs, tables, in rooms, etc., in an environment open to the person-occupiable space, in order to kill bacteria spores that may have contaminated these surfaces.

Regarding claim 51, Bayliss et al. teach the method of decontaminating a contaminated surface where the photosensitizer is a solution (see page 264 - 0.1M sodium phosphate buffer pH 7.0 and up to 2.5 g hydrogen peroxide/100 m), and the

step of spraying the photosensitizer onto the contaminated surface comprises electrically charging at least one component of the solution (applying Blidschun's teaching and electrically charging the hydrogen peroxide component of the solution - see explanation above).

Regarding claim 52, Bayliss et al. further teach the method of decontaminating a contaminated surface further comprising controlling the temperature of the sprayed photosensitizer to enhance the formation rate, mobility, or the decontaminating activity of the photo-products and their ensuing reactions (see page 264 - sample temperatures were controlled by heating to 85°C and cooling in ice for at least 5 minutes).

Regarding claim 53, Bayliss et al. further teach the method of decontaminating a contaminated surface where the photosensitizer includes hydrogen peroxide (see page 263 - ultraviolet light) irradiation of spores of Bacillus subtilis in the presence of hydrogen peroxide - a common photosensitizer; see Applicant's Specification, page 7, lines 5-9 - produced a rapid kill which was up to 2000-fold greater than that produced by irradiation alone).

Regarding claim 57, Bayliss et al. further teach the method of decontaminating a contaminated surface where the light includes light of wavelengths between about 200 nm and about 320 nm (see page 263 - ultraviolet irradiation of the spores at wavelengths 254 nm).

5. Claims 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the non-patent literature, Bayliss et al. in view of Blidschun et al. and Peltier, as

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applied to claim 50 above, and further in view of Horowitz et al. (U.S. Patent No. 5,232,844).

Bayliss et al. in view of Blidschun et al. and Peltier teach the method of decontaminating a contaminated surface as described above in paragraph 2, but fail to teach the step of illuminating the sprayed surface with a continuous beam.

Regarding claim 54, Horowitz et al. teach the illumination of a photosensitizer, such as phtalocyanine or psoralen with a continuous beam of ultraviolet light for a specific time, depending on the time of photosensitizer used for substantially inactivating a virus and resulting in a retention of intact cell functionality and structure of greater than 80% (see col. 5, lines 6-17; col. 8, lines 47-54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Horowitz et al. with Bayliss et al. in view of Blidschun et al. and Peltier for applying a continuous beam of ultraviolet light for illuminating a photosensitizer, such as hydrogen peroxide, because such application of continuous ultraviolet light causes the irradiation of spores of *Bacillus subtilis*, as taught by the non-patent literature Bayliss et al.

Regarding claim 55, Bayliss et al. further teach the method of decontaminating a contaminated surface where the light includes light of wavelengths between about 200 nm and about 320 nm (see page 263 - ultraviolet irradiation of the spores at wavelengths 254 nm).

6. Claims 56 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over the non-patent literature, Bayliss et al. in view of Blidschun et al. and Peltier, as applied to claim 50 above, and further in view of Bowing et al. (U.S. Patent No. 4,051,058).

Bayliss et al. in view of Blidschun et al. and Peltier teach the method of decontaminating a contaminated surface as described above in paragraph 2, but fail to teach the photosensitizer including a surfactant which is a liquid carrier.

Bowing et al. teach a stable peroxy-containing concentrate (also known as suitable photosensitizers) for the production of microbicidal agents characterized by a content of 0.5% to 20% by weight of a peracid (known photosensitizer), 25% to 40% by weight of hydrogen peroxide (known photosensitizer) - which have long term effects on disinfecting most microorganisms (see col. 3, lines 30-35), and other constituents (see col. 1, lines 50-58). Bowing further teaches that the stable peroxy-containing concentrate contains alkylbenzene sulfonates or alkyl sulfates (see col. 3, lines 46-53), e.g. surfactants. When applying photosensitizers, surfactants aid in the dispersion and coating of the photosensitizers to surfaces and act as a liquid carrier. Because the intention of Bayliss et al. in view of Blidschun et al. and Peltier provide for the adhesion of a photosensitizer, one that is electrically charged in the case of Blidschun et al., it would have been obvious for one of ordinary skill in the ad to aid the dispersion and coating of a photosensitizer onto a contaminated surface by including a surfactant that is a liquid carrier, as taught by Bowing et al., into the photosensitizer to aid in the dispersion and coating of the photosensitizer on the surface being treated.

7. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over the non-patent literature, Bayliss et al., "The Combined Effect of Hydrogen Peroxide and Ultraviolet Irradiation op Bacterial Spores", Journal of Applied Bacteriology 47:263-269 (1979) in view of Blidschun et al. (U.S. Patent No. 4,680,163) and Peltier (U.S. Patent No. 5,382,410) as applied to claim 50 above, and further in view of Richter et al. (U.S. Patent No. 5,436,008).

Bayliss et al. in view of Blidschun et al. and Peltier fail to specifically teach a photosensitizer that includes solid or liquid carrier particles.

Richter et al. discloses a sanitizing composition for treating inanimate surfaces such as food contact surfaces (see col. 1, lines 9-21). The composition comprising an antimicrobial agent can take the form of liquid solutions gels, aerosol and pump sprays or solids and is intended to sanitize and disinfect the contaminated surface (see col. 4, lines 50-64). The antimicrobial composition further contains a carrier to transport the antimicrobial agents to the intended surface of application and furthermore, the carrier may be used to maintain the antimicrobial agent on the intended surface for an extended period of time (see col. 7, lines 16-30). If the antimicrobial composition is a solution, dispersion, gel, emulsion, aerosol, or solid, useful carriers include water or aqueous systems as well as organic or inorganic based carriers (see col. 7, lines 38-41). This reference has been relied upon to teach that it is well known to use liquid carrier particles when the antimicrobial composition to be dispersed is in the form of an aerosol.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of Bayliss et al. in view of Blidshun et al. and Peltier and include liquid carrier particles as taught by Richter et al. in order to enhance the dispersion of the antimicrobial agent to the intended surface that is to be treated since Richter et al. and the modified invention of Bayliss et al. both disclose processes for disinfecting contaminated surfaces using a solution that is sprayed onto the surface.

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8. Claims 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over the non-patent literature, Bayliss et al., "The Combined Effect of Hydrogen Peroxide and Ultraviolet Irradiation op Bacterial Spores", Journal of Applied Bacteriology 47:263-269 (1979) in view of Blidschun et al. (U.S. Patent No. 4,680,163) and Peltier (U.S. Patent No. 5,382,410) as applied to claim 50 above, and further in view of Dingus et al. (U.S. Patent No. 5,670,469).

Regarding claim 59, Bayliss et al. in view of Blidschun et al. and Peltier fail to specifically teach the step of spraying the electrically charged photosensitized using a portable, field-deployable sprayer. Dingus et al. discloses a method of decontaminating a surface (1) by spraying a disinfectant solution onto a surface using a portable sprayer (4) (see figure 1A; col. 8, lines 34-40). Such surfaces include all types of military equipment, food storage containers, emergency equipment, hygiene facilities, etc. (see col. 7, lines 23-67). This reference has been relied upon to teach that it is well

known in the art of surface sterilization to use a portable sprayer to dispense a disinfectant solution to a surface to be treated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Bayliss et al. in view of Blidshun et al. and Peltier with the teachings of Dingus et al. and use a portable spraying device for dispensing the disinfectant solution onto other surfaces to be treated such as those described by Dingus et al. (military vehicles, hygiene facilities, etc.) in addition to the contaminated surfaces of food containers or air ducts.

Regarding claim 60, Bayliss et al. discloses the use of ultraviolet (UV) light to illuminate the photosensitizer that has been sprayed onto a surface (see page 263).

## Response to Arguments

9. Applicant's arguments filed January 19, 2006, with regards to claims 50-57 have been fully considered but they are not persuasive.

Regarding independent claim 50 and dependent claims 51-53 and 57, the applicant's representative first argues that the prior art of Bayliss et al. and Blidshun et al. fail to suggest or motivate practicing the methods of the apparatuses on larger objects, volumes, or spaces, specifically those large enough to be person-occupiable. The examiner respectfully disagrees.

Blidshun et al. specifically recites that the process is for sterilization of containers suitable for use in the storage of foodstuffs (see col. 1, lines 7-18) and is therefore not limited to only small containers. Furthermore, it is well known that restaurants routinely

receive food shipments in large bulk containers (for example 5-gallon plastic containers used to ship sliced pickles to fast food chains). A container of this size is considered a human occupiable space since a baby or small child can fit within the 5-gallon container. Blidshun et al. does not disclose that the size of the container is limited to a container that is smaller than a person occupiable space. Therefore, Blidshun et al. suggests practicing the methods on person occupiable spaces.

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Additionally, Peltier has been relied upon (in addition to the teaching of Blidshun et al.) for a general teaching that it is known to disperse an electrically charged disinfectant into a space much larger than a food container, such as an office or ventilation system (both a person occupiable space). The motivation for combining the references is supported by the fact that all three references are faced with the same problem, disinfecting a contaminated surface using a chemical disinfectant that is sprayed onto the surface to be treated. The applicant's representative further argues that Peltier does not disclose "spraying" and only teaches, "dispersing" or "vaporized". The examiner would like to direct the attorney to Webster's Dictionary which states that the definition for "sprayed" is to disperse (see <a href="https://www.webster.com">www.webster.com</a>).

In response to applicant's argument that Bayliss et al., Blidshun et al, and Peltier are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the references of Bayliss et al., Blidshun

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et al., and Peltier are not non-analogous art since they all fall under the art of surface sterilization using dispersed or sprayed disinfectants. The references of Bayliss et al. and Blidshun et al. are particularly relevant to the applicant's field of art since they both disclose using a photosensitizer to treat a contaminated surface of an object.

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In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The motivation for combining Blidshun et al. with Bayliss et al. is disclosed by the method of Blidshun et al. who teaches the step of electrically charging the photosensitizer to convey the atomized spray to the surface to be treated. This enhances the sterilization effects by conveying a higher proportion of the atomized photosensitzer onto all of the contaminated surfaces of the container (see col. 1, line 65 to col. 2, line 67 of Blidshun et al.). Such a teaching provides motivation to modify the invention of Bayliss et al. to further enhance and optimize the surface sterilization process.

10. Regarding claims 54 and 55, in response to applicant's argument that Horowitz et al. is nonanalogous art, it has been held that a prior art reference must either be in the

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field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24

USPQ2d 1443 (Fed. Cir. 1992). In this case, Horowitz et al. teaches a process that inactivates viruses in compositions using a photosensitizer that is illuminated by a continuous beam of light. Such a treatment is a sterilization process and falls directly in the art of sterilization or disinfection using a photosensitizer. This process is reasonably pertinent to the problem with which the applicant is concerned which is treatment of contaminated surface using a photosensitizer. Additionally, the reference of Bayliss et al. also teaches using a photosensitizer exposed to light in order to kill a virus. The prior art reference of Horowitz et al. is considered analogous art.

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11. Regarding claim 56, In response to applicant's argument that Bowing et al. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Bowing et al. is directed to developing a composition which is a suitable antimicrobial agent containing a photosensitizer and falls directly in the field of sterilization and more specifically in the field of sterilization compositions containing photosensitizers. This reference is analogous art.

12. Regarding claim 58, Applicant's arguments, see page 8, filed January 19, 2006, with respect to the rejection(s) of claim(s) 58 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Richter et al. and Bowing et al. (see rejections of claim 58 above).

#### Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 15, 2006

SEC J.E.e.

KRISANNE JASTRZAB PRIMARY EXAMINER

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